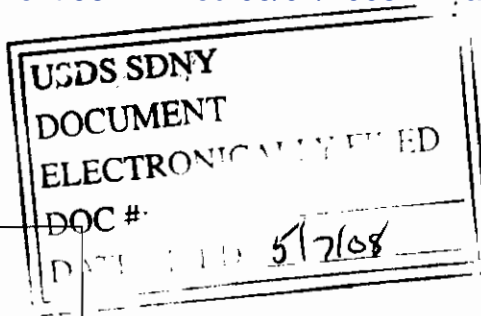


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



RICHARD ELLO,

Plaintiff,

-v-

ISHRI SINGH, *et al.*,

Defendants.

No. 05 Civ. 9625 (RJS)  
ORDER

RICHARD J. SULLIVAN, District Judge:

On March 31, 2008, defendants Ishry Singh, Laborers-Employers Cooperation and Education Trust Fund, Mason Tenders' District Council Trust Funds ("MTDC Funds"), Raymond Pocino, as Trustee of the MTDC Funds, and John Virga (collectively, "Fund Defendants") submitted a letter requesting that the Court "reconsider its March 14 Order with respect to the Fund Defendants and formally dismiss them from this action." On the same day, defendants Laborers International Union of North America and Raymond Pocino (collectively "Union Defendants") also submitted a letter stating their view that "[d]ismissal of this action is . . . therefore appropriate because Ello has abandoned the First Amended Complaint as a matter of law and has failed to file a Second Amended Complaint." Union Defendants also requested, in the alternative, "permission to file a motion to dismiss the first Amended Complaint for failure to state a claim against the Union Defendants."

Plaintiff submitted a letter dated April 2, 2008, requesting ten business days to respond to the letters and to the Court's March 14, 2008 order, which she claimed she had not received.

The Court views the March 31, 2008 letters as pre-motion letters seeking permission to file a motion to dismiss, submitted in accordance with Rule 2(A) of the Individual Practices of

the undersigned. Accordingly, on April 4, 2008, the Court issued an order directing plaintiff to respond, by April 14, 2008, to the issues raised in the letters submitted by defendants. The April 4 Order also specifically advised plaintiff that “future failure to comply with court orders may result in dismissal of this case pursuant to Rule 41 of the Federal Rules of Civil Procedure.”<sup>1</sup>

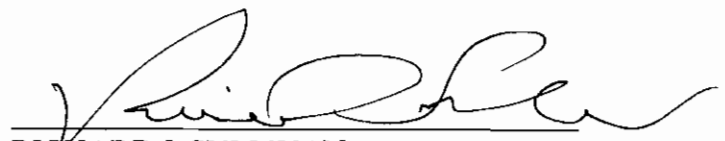
No letter from plaintiff in accordance with the April 4 Order was ever received.

Accordingly, defendants’ request to file a motion to dismiss as outlined in defendants’ letters of March 31, 2008 is granted. In that motion, defendants should address, *inter alia*, whether this case should be dismissed due to plaintiff’s failure to follow Court orders pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

Defendants’ motion shall be filed and served on or before May 28, 2008. Plaintiff’s opposition papers shall be filed and served on or before June 18, 2008. Defendant’s reply papers shall be filed and served on or before June 25, 2008.

SO ORDERED.

Dated: May 7, 2008  
New York, New York

  
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RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> As the Court has previously articulated, it is plaintiff’s responsibility to (1) ensure that he is properly receiving ECF notifications, and (2) regularly check the docket in this case. Nevertheless, the Court faxed and mailed the April 4 Order to the fax number and address provided by plaintiff’s counsel in her April 2, 2008 correspondence to the Court, and retains proof of the fax and mailing should there be any dispute over whether plaintiff received the April 4 Order.